No. 54788-1-II (Pierce County No. 18-2-07410-5)

WASHINGTON STATE COURT OF APPEALS DIVISION II

In Re The Detention of William Curry Jr.,
Appellant,

v.

The State of Washington,
Respondent,

APPELLANT'S APPEAL OF DISMISSAL OF WRIT OF HABEAS CORPUS UNDER RCW 7.36 et seq., EX PARTE COMMUNICATION

Pro se
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION TWO

In the Matter of the Personal Restraint of: WILLIAM CURRY Jr., Petitioner.
No. 54788-1-II

A. ASSIGNMENTS OF ERROR

1. Pierce County Superior Court Judge Philip Sorensen, and the Assistant to the Attorney General, Joshua Choate erred and violated Mr. Curry's State and Federally protected due process and equal protection rights under the color of law when those entities acted improper when they convened the following;

a. Judge Philip Sorensen : convened an ex parte communication informing Assistant Attorney General to respond to Default Judgment ;

b. Judge Philip Sorensen, and Assistant to the Attorney General Joshua Choate acted in conspiracy in violation of the Washington and U.S. constitution to dismiss the Appellant right to a fair court proceeding pursuant to RCW 7.36 .

c. Judge Philip Sorensen : extend the Writ of habeas Corpus Proceedings ever chance he could without proper cause; the way the original summons were served until Appellant had to pay a server to serve to the Attorney Generals Office.

d. Judge Philip Sorensen, and Assistant to the Attorney General Joshua Choate acted to obtain an dismissal of Writ of Habeas Corpus without addressing Appellant's Constitution or Civil Rights.

2. Pierce County Superior Court Judge Philip Sorensen, and Assistant to the Attorney General Joshua Choate violated Mr. Curry's State and Federally protected due process and equal protection rights in the following manner:

a. Judge Philip Sorensen, and Assistant to the Attorney General Joshua Choate sought to obtain civil commitment for indefinite incarceration without due process or equal protection under the law or Pierce County Superior Court for that matter the action taken against the Appellant show a active prejudice and bias against Appellant fighting for liberty in an unjust system.

b. Judge Philip Sorensen, granted request and helped the Assistant to the Attorney General Joshua Choate in every way assisting and forgetting about his oath or gates keeping function.

c. This appeal raises an interesting question Judge Philip Sorensen under Washington Code Judicial Conduct pertaining to the failure of a state judge to recuse himself because his impartiality might reasonably be questioned.

d. Appellant claims that the trial judge sitting over his civil commitment proceeding had erroneously failed to recuse himself sua sponte. Appellant ask this to court analyzed the issue first under the Washington Judges' Code of Judicial Conduct and second under the fourth, six, eighth, and fourteenth amendments to find the situation was of those enumerate in the Code of Judicial Conduct and the Constitution that would mandate recusal.

3. Pierce County Superior Court Judge Philip Sorensen intention regarding the ex parte communication was intentional to disclose to the Assistant Attorney General Joshua Choate about his failure to respond to summons are acknowledge the until after time to respond had passed. As a matter of record, the Judge Sorensen had indicated that he would not give Appellant "any undue weight toward a fair unbiased proceeding ."

a. Appellant as this Court to look at this case under the objective prong, to find any appearance of bias sufficient to cause doubt as to Judge Philip Sorensen impartiality. Specifically, the court should observed that Judge Philip Sorensen did engage in any active conduct demonstrating the appearance of impropriety.

b. Appellant ask this Court of Appeals to issue an order and opinion ruling for Appellant as to his Writ of Habeas Corpus Proceeding. Specifically, the court should agree with Appellant that the Superior Court Judge Philip Sorensen erroneously failed to recuse himself sua sponte from hearing appellant's Writ of Habeas Corpus Proceeding Johnson following his voluntary The record speaks on this injustice received by an out-of-court ex parte communication to Assistant Attorney General Joshua Choate from the Pierce County Superior Court Clerk, or Judge Sorensen himself someone choose to interfere regarding the Appellant's default judgment to do so did more than created an appearance of bias, and prejudice on the part of the Judge Philip Sorensen in violation of Appellant's due process and equal protection rights under the United States Constitution.

c. Judge Philip Sorensen, and Assistant Attorney General resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, and resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the Superior Court proceeding.

d. Judge Philip Sorensen objectively unreasonable failure to recuse himself sua sponte gave rise to an appearance of bias and that the appearance of bias violated Appellant's due process rights well create a situation in which a reasonable observer would question the Judge Sorensen impartiality.

e. Appellant ask this Court to analysis the active conduct of Judge Philip Sorensen he did not consider the reaction of the reasonable observer are just did not care about the related risks of injustice to the Appellant undermining his right to in pursuit of liberty from a unjust illegal confinement. The public's confidence in the judicial process that result from the continued participation of a judge in a proceeding despite the judge's appearance of

bias and prejudice actions, evidence and that there is more than enough hear to show Judge Philip Sorensen harbored any actual bias and prejudice toward Appellant.

4. Appellant arguing that Superior Court Judge Philip Sorensen and Assistant Attorney General Joshua Choate had ex parte communication that not only created an appearance of bias and prejudice and that the appearance of bias and prejudice and the conspiracy is costing Appellant his right to a fair violated his due process rights under the United States Constitution.

a. Judge Philip Sorensen interest in the outcome? That conclusion was based on the basic requirement of due process and equal protection that the defendant receive a fair trial in a fair tribunal fairness certainly required an absence of actual bias, and prejudice our system of law has always endeavored to prevent even the probability of unfairness. Judge Philip Sorensen did his very best to weigh the scales of justice and can not satisfy the appearance of justice that his appearance of bias and prejudice violated the due process and equal protection clause.

b. The question is not whether some possible temptation to be biased exists; instead, the question is, when does a biasing influence require disqualification? Consistent with the common law, we begin in answering this question by presuming the honesty and integrity of those serving as adjudicators. Disqualification is required only when the biasing influence is strong enough to overcome that presumption, that is, when the influence is so strong that we may presume actual bias. This occurs in situations in which experience teaches that the possibility of actual bias is too high to be constitutionally tolerable. A court must be convinced that a particular influence, under a realistic appraisal of psychological tendencies and human weakness, poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

c. The court acknowledged that "the due process clause sometimes requires a judge to recuse himself without a showing of actual bias, where a sufficient motive to be biased exists." Id. at 1371 (citing Tumey v. Ohio, 273 U.S. 510, 532 (1927); In re Murchison, 349 U.S. 133, 136 (1955); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986)). "Despite the Supreme Court's broad pronouncements about 'the appearance of justice,'"

d. In re Schuoler, 106 Wash.2d 500, 508, 723 P.2d 1103 (1986). Under modern substantive due process and equal protection doctrines, once a constitutionally protected liberty interest is considered "fundamental," governmental action that intrudes upon it will receive strict judicial scrutiny. See Tunstall ex rel. Tunstall v. Bergeson, 141 Wn.2d 201, 225, 5 P.3d 691 (Wash. 2000).

Issues Pertaining to Assignments of Error

1. Appellant's was deprived of his liberty interest in his Petition for Writ of Habeas Corpus in State Court proceeding in violation of his right to due process. Duty of the court to act "without delay". RCW 7.36.040.

2. Appellant argues that since such detention would be based on present status rather than the commission of a past act, regular procedures for review would be essential to assure that a basis for the commitment continued to exist. Hirabayashi v. United States, 320 U.S. 81, 108, 63 S.CT. 1375, 87 L.Ed. 1774 (1943)

3. Appellant's was deprived of his liberty interest liberty interest in his Petition for Writ of Habeas Corpus to hold Appellant under a fraudulent mental health diagnosis to hide civil and constitutional wrongs done by Judge Philip Sorensen, and all State Actors in violation of the equal protections due process, and cruel and unusual punishment, and in violation of the Washington Constitution and the United States Constitution.

4. Deprivation of Appellant's Petition for Writ of Habeas Corpus of a constitutional magnitude in nature implicates a " structural" right so basic to a fair trial that requires findings of constitutional error. Error requires not only an evaluation of the remaining incriminating evidence in the record, but also the most perceptive reflections as to the probabilities of the effect of error on a reasonable trier of fact. United States v. Garibay, 143 F.3d 534 , 539 (9th Cir.1998); United States v. Castaneda, 16 F.3d 1504, 1509 (9th Cir.1994). Garibay, 143 F.3d at 539 (quoting United States v. Harrison, 34 F.3d 886, 892 (9th Cir. 1994)). The test "is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained". Powell v. Galaza, 282 f.3d 1089, 1096- 97 (9th Cir. 2002)(explaining that structural error applies in habeas review. United States v. Erikson, 75 F.3d 470, 479 (9th Cir. 1996). This requires a showing of a "fair assurance" that the judgment was not substantially swayed by the error.

5. Interference in default judgment ruling was and is intrinsically harmful this is not a harmless error a serious violation that tainted the entire process, thereby rendering Appellant constitutional magnitude of the harm suffered by a bias Judge and Assistant Attorney General virtually impossible to conceive.

6. Judge Philip Sorensen arbitrary and unreasonable one sided interest in Appellant's Petition for Writ of Habeas Corpus though continuances that were given to the Assistant Attorney General to respond from the fist filing of Writ. Abuse of discretion to prejudice Appellant and to inconvenience Appellant when know legitimate reason existed but for delay and to assist Assistant Attorney General who choose not respond the Assistant Attorney General has acknowledge that he received all Appellant's summons.

7. Record shows Judge Philip Sorensen actual bias and leaves an abiding impression that perceived advocacy toward partiality, abuse of power, judicial misconduct, and judicial abuse request for entry of default was made against Assistant attorney General for failure to plead or otherwise defend this action as provided by the Superior Court Rules of Procedure in violation of (CR) 55(a), (2), (A), (b) required by rule 10.5,(3),(4).

8. Judge Philip Sorensen arbitrary and unreasonably deprivation of Appellant of constitutional and civil rights because after ascertaining that respondent did ot have a representative in the courtroom, the court should have granted Petitioner's motion for default judgment. Respondent
represented that notice had been served, no response was received, and all other considerations were satisfied for entry of a default judgment. The Courts impression that hey can help the respondent out about the appearance after service, summons, and motion for default was incorrect due to the deliberate failure to attend Habeas Proceeding.

9. Judge Philip Sorensen failure to recuse himself when required to do so by the judicial canons as violation of the appearance of fairness doctrine. State v. post, 118 Wash.2d 596, 826 P.2d837 P.2d 599 (1992). State v. Carter, 77 Wash.App.8, 12, 888 P.2d 1230 (1995). Under this doctrine, evidence of a judge's actual bias is not required; it is enough to present evidence of a Judge's actual or potential bias. Post, 118 Wash.2d at 619 n. 9, 826 p.2d 172, 837 P.2d 599. the CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating.

10. Due Process Right U.S.C.A. Const.Amend.14. to an impartial tribunal the due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. Like the protections of due process, Washington's appearance of fairness doctrine seeks to prevent the problem of a bias or potentially interested Judge. In State v. Madry, 504 p.2d 1156, 8 Wn.App.61 (Wash.App. Div.2 1972), the court held, Fairness of course requires an absence of actual bias in the trial of cases.

But our system of law has always endeavored to prevent even the probability of unfairness. 8 Wash. App. 61,68,504 P.2d 1156 (1972) (quoting Murchison, 349 U.S. at 136, 75 S.Ct. 623 U.S.133 (U.S. Mich. 1955) (Citing to the then recently enacted canons of CJC of the American Bar Association, the court stated:

The Judge should have recognized that the unauthorized communication between the Assistant Attorney General created the "potential for prejudice."Thus, because the communication raised a risk of prejudice,The appearance of bias or prejudice can be as damaging to public confidence in the appearance administration of justice as would be the be the actual presence of bias or prejudice. The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial. Next in importance to rendering a righteous judgment is that it be accomplished in such a manner that it will cause no reasonable questioning of the fairness and impartiality of the judge. A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.

11. Washington's appearance of fairness Doctrine. Washington cases have long recognized that judges must recuse themselves when the facts suggest that they are actually or potentially biased. Diimmel v. Campbell, 68 Wash.2d 697, 699, 414 P.2d 1022 (1966). (It is incumbent upon members of the judiciary to avoid even a cause for suspicion of irregularity in the discharge of their duties). In State ex rel. McFerran v. Justice Court of Evangeline Starr, 32 Wash.2d 544,548 02 P.2d 927 (1949), the court stated there can be no question but that the common law and federal and state constitutions guarantee to a defendant a trial before an impartial tribunal, be it Judge or Jury. It quoted the court's 1898 decision in State ex rel. Barnard v. Board of Education. Of City of Seattle, 52 P.317, 19 Wash.8, (Wash.1898) for its observation that the principle of impartiality, disinterestedness, and faitness on the part of the judge is as old as the history of courts. 32 Wash.2d at 549,202 P.2d927 9quoting State ex. Rel. Barnard v. Bd. Of Educ., 19Wash.8,17,52 p.317 (1898).

B. STATEMENT OF THE CASE

Procedural Facts: The Appellant Mr. Curry is in pre-trial confinement at the Special Commitment Center trying not to end up a term of total confinement within the Department of Health and services on April 19, 2018, Pursuant to Title 7. Special Proceedings and Actions Chapter 7.36 Habeas Corpus, &.36.240 Writs and Process—issuance—service – Defects Appellant filed a Writ of Habeas Corpus Case Number 18-2-07410-5 in Pierce County Superior Court. The case was Order Assigned to Pierce County Order Judge **Frank Cuthbertson** Department: **21** docket Code: **ORACD**, Appellant received legal mail April 19, 2018 setting review hearing date Mandatory Hearing Date: August 17, 2018 at 9:00 AM,

Next Mandatory- Court Review Hearing Track Assignment April 4, 2019 at 9:00 AM. March 15, 2019 Appellant received legal mail from Judicial Assistant Monica Schmuck informing him that the above referenced case has been reassigned to the Honorable **Philip Sorensen**, Department: **19** Docket Code: **ORSCS** the same Pierce County Judge over seeing Appellant's civil commitment proceeding. Appellant received legal mail Mandatory Hearing Date: April 19, 2019 Court Review Hearing 10:00 Am. Appellant received legal mail Mandatory Hearing Date: July 12, 2019 Court Review Hearing 10:00 Am. Appellant received legal mail Mandatory Hearing Date: September 6, 2019 Court Review Hearing 10:00 Am. Appellant received legal mail Mandatory Hearing Date: December 6, 2019 Court Review Hearing 10:00 Am. Appellant received legal mail Mandatory Hearing Date: March 13, 2020 Court Review Hearing 10:00 Am.

Appellant received legal mail from the Assistant Attorney General Joshua Choate Date: February 21, 2020 Notice of Appearance and declaration of service.

Appellant received legal mail Mandatory Hearing Date: April 24, 2020 Court Review Hearing 9:00 Am, Pierce County Superior Court Judge Philip K. Sorensen Order Dated: March 13, 2020 and after hearing in Open Court with Mr. Curry and Mr. Choate appearing by phone the Court Orders : (1) Mr. Curry's motion for default is denied; (2) Mr. Curry's Objection to late Notice of Appearance is denied; and (3) Mr. Choate note motion to dismiss or other dispositive motion in accordance with court rules.

Appellant received legal mail Dated April 27, 2020 Pierce County Court Order Granting State's motion to dismiss petition For Writ of Habeas Corpus (proposed).

The Appellant Mr. Curry has filed A Writ of habeas Corpus challenging his confinement and motions to disqualification, and recuse Judge Philip Sorensen due to his sitting over Appellant's civil commitment petition under RCW 71.09 et. seq., for the following reasons:

(1) Pierce County Judge Philip Sorensen's lack of integrity and invoked a miscarriage of justice which Judge Sorensen took a oath to preserve affecting his reputation of the judicial process.

(2) Pierce County Judge Philip Sorensen's misuse of authority under the statute that seriously affected the Appellant's substantial rights, and fairness, integrity, or public reputation of the judicial proceedings.

(3) Pierce County Judge Philip Sorensen's intentional error was prejudicial in that it affected the outcome of the proceedings and have been completely eviscerated throughout.

(4) The Appellant filed a statement of arrangements as he was instructed by the Washington court of Appeals, and to Sheri Schelbert Official court reporter Pierce County Superior Court Dept. 19 request for court transcript of filings under Pierce County No. 18-2-07410-5 know response from Pierce County Court Reporter. So Appellant completed appeal to the best of my his abilities. Appellant claim that superior court violated his constitutional rights to prepare an adequate defense by refusing to provide free transcript of prior proceeding. United states v. Devlin, 13 F.3d1361, 1363 99th Cir.1994).

(5) Pierce County Judge Philip Sorensen's lack of Habeas Corpus Proceedings based on qualifying changes in law or fact was the only available procedural device to prevent injustice and remedy the due process violation. Erroneous court rulings deprived Mr. Curry of habeas review to which he was entitled and appellate review to correct that error, ultimately effecting an arbitrary and complete denial of the statutory right of habeas corpus review, suspending the Writ, and denying the most basic precepts of due process.

(6) Pierce County Judge Philip Sorensen's lack of 7.36 , the right of a state prisoner to habeas

corpus proceeding in state court. Right protects liberty, ensuring that claims of unjust imprisonment are heard and decided. As with the parallel statutory right of appeal, the statutory

right to habeas corpus "would be unique among state actions if it could be withdrawn without consideration of applicable due process norms" for "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution–and, in particular, in accord with the Due Process Clause.

(7) Pierce County Judge Philip Sorensen's to terminate a habeas corpus proceeding arbitrarily and erroneously, without determination of the petitioner's claims then to deny transcript perfect appeal jurisdiction that error based on a clear intervening collective decision raises grave constitutional questions of due process of law.

(8) Blanket prohibition of claims in habeas petitions raises grave questions about whether its interpretation suspends the Writ in violation of the Constitution. Such a result would be constitutionally unacceptable, and for that precise reason, should trigger the Court's doctrine of constitutional avoidance.

(9) The Court has adhered to the principle that habeas corpus is, at its core, an equitable remedy. This Court has consistently relied on the equitable nature of habeas corpus to preclude strict rules of *res judicata*. Thus, for example, in *Sanders v. United States*, 373 U.S. 1 (1963), this Court held that a habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice." *Id.*, at 15-17. The *Sanders* Court applied this equitable principle even to petitions brought under 28 U.S.C. § 2255, though the language of § 2255 contained no reference to an "ends of justice" inquiry. 373 U.S. at 12-15.

Introduction

The ultimate issue is whether the Pierce County Superior Court Judge Philip Sorensen and Assistant to the Attorney General, Joshua Choate erred when conspired to prohibit Appellant from having his day in court to challenge his civil commitment petition under RCW 71.09. In a Writ of habeas Corpus Proceeding in lieu of his liberty because it can be determined that the claims of the Writ a true and correct the authority and use of the courts discretion to determine whether he should have his civil and constitutional rights is truly egregious. There is little doubt that prohibiting Appellant from even fighting for his liberty is a true manifest of injustice. It is however contrary to law, an abuse of discretion, and a violation of the Constitution.

C. ARGUMENTS

1. EX PARTE COMMUNICATION; This may be a matter of first impression. The Appellant argues that Pierce County Superior Court Judge Philip Sorensen choose to disregard his oath to fairly up hold the law or civil court rules only when it comes to Appellant. In so denying precisely all issue's of civil and constitutional rights as to Appellant's liberty and facts of those particular actions as applied to Appellant. In the light most favorable to the state.

2. Ex parte Communications prohibited, during the pendecy of any al proceeding, no member of a decision – making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person: (1). Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and (2). Provides that public announcement of the parties right to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related.

3. The Appellant argues that Pierce County Superior Court Judge Philip Sorensen based on allegations of deceit and bias and consequences on the part of "decisionmaker that necessarily imply the validity of the dismissal of appellant's writ of habeas corpus procedure, Judge Sorensen delayed any decision on those issues that could help appellant obtain his release from confinement until the Assistant Attorney General responded he was personally responsible for the decision to bypass Appellant's constitutional and civil rights that were being challenge.

4. States assistant Attorney General refused to respond to summons and writ of habeas corpus petition. Petitioner establish cause for the waiver ad show actual prejudice from the alleged violation. The failure to meet the statutory twenty-day time limit did prejudice petitioner in his writ of Habeas Corpus Proceeding.

5. Petitioner next as the court to consider whether the instant dismissal order can be upheld on the basis that prejudice to Petitioner Curry resulted from the State's delay in answering the Writ of Habeas Corpus Petition. See find case (explaining that, in a non-criminal case, the petitioner must show that he was prejudiced by the deprivation of due process based on delay). Curry has argued that he has suffered biases and prejudice as a result of the State's failure to file notice of appearance in his writ of habeas corpus proceeding bring him within twenty - days of the service of summons and complaint. On the basis of prejudice by the judge overseeing the proceeding, and the Attorney General Counsel for the State actors.

6. Since the "liberty interest" is so central to our existence as an ordered, democratic society, the Bill of Rights and the Supreme Court has required special protections for deprivation in the criminal context. At the common law, such a right also existed for civil proceedings which resulted in loss of liberty. Under Matthews v. Eldridge, physical liberty is entitled to procedural protections commensurate with the importance of the right at issue, liberty, which has been protected by the jury since the Magna Carta in 1215.

7. Appellant is being denied the right to a fair jury trial. Baxstrom v. Herold, 383 U.S. 107 (1965). In that trial, the facts and inferences upon which his loss of liberty is being based. Janet B. Jones, What Constitutes "An Opportunity for Full and Fair Litigation" in State Court Precluding Habeas Corpus Review Under 28 U.S.C. § 2254 in Federal Court of State Prisoner's Fourth Amendment Claims, 75 A.L.R. Fed. 9 (1985 with 2004 updates).

8. Bryan, 335 F.3d at 1215-16; Taylor v. Maddox, 366 F.3d 992, 999-1000 (9th Cir. 2004); Lambert v. Blackwell, 387 F.3d 210, 238-39 (3d Cir. 2004). The Supreme Court in Miller-El, supra, did not directly address this issue but — at least according to the dissenting opinion — intimated in dicta that lack of a full and fair state hearing lowered the degree of deference required on federal habeas corpus review and permitted the state court findings to be rebutted by clear and convincing evidence. See Miller-El, 537 U.S. at 358-59 (Thomas, J., dissenting). Motions for Default (see LCR 55(a)), requests for the clerk to enter default judgment (see LCR 55(b)(1)), ex parte motions, motions for the court to enter default judgment where the opposing party has not appeared.

9. THE SUPERIOR COURT JUDGE, AND ASSISTANT ATTORNEY GENERAL FOR THE STATE IMPROPERLY DEPRIVED CURRY OF HIS LIBERTY INTEREST IN VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW WHEN IT PROHIBITED HIM FROM HAVING A FAIR COURT PROCEEDING.

In order to bring a Writ of habeas Corpus, an inmate must show he is under restraint within the meaning of RAP 16.4(b), which provides in part:

> A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceedings, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

Appellant is entitled to relief from the restrain arising out of the Superior Court Judge's, and Assistant Attorney General decision to prohibit him from having a fair Hearing on the issues in said Writ of Habeas Corpus thereby denying him his rights under the Washington and Federal Constitution. He suffered actual and substantial prejudice as a result of the Superior Court Judge's, and Assistant Attorney General violation and actions result in a "complete miscarriage of justice." In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990); In re Reismiller, 101 Wn.2d 291, 293, 678 P.2d 323 (1984); In re Burton, 80 Wn. App. 573, 585, 910 P.2d 1295 (1996).

10. The Superior Court Judge's, and Assistant Attorney General Adoption, Application of there Policy in Court Rules Denying Curry the Right To Fight for his day in court. In Lieu of his liberty Violated Curry's Due Process Rights Because The Policy Exceeds Adoption, Application of there Policy in Court Rules and Statutory Authority.

11. The essence of due process is protection of the individual against arbitrary action by the government. Ohio Bell Telephone Co. v. Public Utilities Com., 301 U.S. 292, 302, 81 L.Ed. 1093, 57 S.Ct. 724 (1937). Moreover, law that dictate particular decisions given particular facts can also create liberty interests. In re Cashaw, 123 Wn.2d 138, 144, 866 P.2d 8 (1994).

12. An agency's policies and regulations must be consistent with the statute under which they are promulgated. Agencies do not have the power to make rules that amend or change legislative enactments. Multicare Med. Ctr. V. Department of Soc. & Health Serv., 114 Wn.2d 572, 589, 790 P.2d 124 (1990); Hi-Starr, Inc. v. Liquor Control Bd., 106 Wn.2d 455, 459, 722 P.2d 808 (1986); Superior Asphalt v. Labor & Indus., Wn. App. 401, 405 929 P.2d 1120 (1996), rev. denied, 132 Wn.2d 1009 (1997).

13. Bird-Johnson Corp. v. Dana Corp., 119 Wn.2d 423, 428, 833 P.2d 375 (1992); Green River Comm'ty College v. Higher Educ. Personnel Bd., 95 Wn.2d 108, 112, 622 P.2d 826 (1980), modified in part, 95 Wn.2d 962, 633 P.2d 1324 (1981); State ex rel. Public Disclosure Comm'n v. Rains, 87 Wn.2d 626, 555 P.2d 1368, 94 A.L.R.3d 933 (1976); State Employees v. Personnel board, 54 Wn. App. 305, 308, 773 P.2d 421 (1989); Kaiser Aluminum v. Dep't of Ecol., 32 Wn. App. 399, 647 P.2d 551 (1982). (citing, In re J.H., 117 Wn.2d 460, 472-73, 815 P.2d 1380 (1991))(the threshold question in any due process challenge is whether the challenger has been deprived of a protected interest in life, liberty or property).

14. The Fourteenth Amendment to the United States Constitution states, "nor shall any state deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Washington State Constitution also provides, "No person shall be deprived of life, liberty, or property, without due process of law." Wash. Const. art. I, sec. 3.

15. It has been held that "[t]he purpose of the constitutional guaranty of due process of law is to protect the individual from the arbitrary exercise of the powers of government." State v. Cater's Motor Freight Sys., 27 Wn.2d 661, 667, 179 P.2d 496 (1947). The Superior Court Judge's, and Assistant Attorney Generals argument rests on the unwarranted and unsupported assumption that it has the power and authority to decide Curry's liberty interest without providing him any of the procedural or substantive rights required by State and Federal Law. Applying this arbitrary practice and policy it can refuse to review Writ of habeas Corpus proceeding to Curry. Through administrative convenience, however, does not trump the constitution.

16. The Superior Court Judge's, and Assistant Attorney Generals DOC decision here likewise illegally circumvents the procedural protections of the Writ of Habeas Corpus, and Court Rules that only apply to Mr. Curry. There is no legal basis to support the Superior Court Judge's, and Assistant Attorney Generals Bias or Prejudice argument that despite the procedural and substantive rights contained in Writ of Habeas Corpus, and Court Rules, Superior Court Judge, and Assistant Attorney General has the sole power to find an take away rights arbitrary decision that Curry is a separate constitutional violation. See, Williams v. Seattle Sch. Dist. No. 1, 97 Wn.2d 215, 222, 643 P.2d 426 (1982); accord Dep't of Corrections v. Appeals Board, 92 Wn. App. 484, 489, 967 P.2d 6 (1998)(the expectation and right to be free from arbitrary and capricious government action is itself a fundamental right irrespective of any other constitutional right).

17. APPELLANT WAS PREJUDICED BY THE SUPERIOR COURT JUDGE'S AND ASSISTANT ATTORNEY GENERALS DECISION TO PROHIBIT HIM FROM HAVING HIS WRIT OF HABEAS CORPUS HEARD AND RULED ON IN OPEN COURT AND THAT DECISION IS NOT HARMLESS.

a. The Superior Court Judge's, and Assistant Attorney Generals argument is flawed. An error is harmless if there has been a violation of an evidentiary rule and within reasonable probabilities, the outcome of the trial would not have been materially affected had the error not occurred. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). If there is a violation of the constitution, an error is harmless if the untainted evidence is so overwhelming it necessarily leads to a finding guilt. State v. Whelchel, 115 Wn.2d 708, 728, 801 P.2d 948 (1990). Thus, before a reviewing court can determine whether an error is harmless, it must first analyze the evidence that was admitted at the hearing or trial. Without any evidence, it is impossible to determine the outcome absent the constitutional or no constitutional error.

b. The United States Supreme Court has ruled that the matter of procedural due process requires the appearance of fairness and fairness in fact. Withrow v. Larkin, 421 U.S. 35, 43 L.Ed.2d 712, 95 S.Ct. 1456 (1975). The appearance of fairness doctrine requires that the tribunal that hears a matter must not only act fairly but must do so with the appearance of fairness. In effect the Superior Court Judge, and Assistant Attorney General has already prejudged any challenge Curry submits. The admission itself is in the court records of how all hearings were handled during the Writ of Habeas Corpus proceeding violates Curry's due process right to a fair determination by a fair decision maker.

18. THE SUPERIOR COURT JUDGE AND ASSISTANT ATTORNEY GENERAL DECISION TO PROHIBIT HIM FROM HAVING HIS WRIT OF HABEAS CORPUS HEARD AND RULED ON IN OPEN COURT AND THAT DECISION WAS BIAS.

a. Judge and Assistant Attorney General actions indicates mandatory intent, specific decision are concerning and improper, judge and Attorney General frustrate the fairness of the Writ of Habeas Corpus Proceedings used to secure liberty.

Judge and Assistant Attorney General
failure to comply with local rule are grounds for reversal prejudice has resulted.

b. Judge and Assistant Attorney General actions done in bad faith have inherently become prejudicial. Actions implicates there is know equal justice in the Pierce County Superior Court even when you present an adequate defense or writ of habeas corpus of facts that the Court does not wont to express for fear of what it might expose. Judge and Assistant Attorney General inference upon inference to indulge every reasonable presumption against Appellant's fundamental constitutional rights. Judge should have a special responsibility to ensure the integrity of the judicial process by living up to the code of professional ethics and fair play at all times.

c. Haupt v. Dillard, 17 F.3d 285 (9th Cir. 1994); Liljerberg v. Health Serv. Corp, 486 U.S. 847, 100 L.Ed.2d 855, 108 S.Ct 2194 (1988). Right to a fair trial is basic requirement of due process and includes right of unbiased judge.

d. Castro- Cortez v. I.N.S., 239 F.3d 1037 (9th cir. 2001). Neutral Judge is one of the most basic due process protections.

e. Rojem v. Gibson, 245 F.3d 1130 (10th Cir. 2001). A state must provide an indigent defendant with the basic tools to present an adequate defense or appeal. Quintero v. bell, 256 F.3d 409 (6th Cir. 2001); Shewfelt v. Alaska, 228 F.3d 1088 (9th cir. 2000); U.S. v. Rramos - Torres, 187 f.3d 909 (8th Cir. 1999). (1). Structural errors call into question the very accurancy and reliability of the trial process and thus are not amenable to harmless error analysis, but require automatic reversal. (2). Denial of a jury trial is a structural error subject to automatic reversal.

f. Lane v. Wilson, 307 U.S. 368, 95 L.Ed 110, 59 S.Ct 872 (1951); Gomillion v. Lightfoot, 364 U.S. 339, 51 5 L.ED.2d 110, 81 S.Ct 125 (1960). One must be ever aware that the Constitution forbids sophisticated as well as simple minded modes of discrimination.

19. THE SUPERIOR COURT JUDGE PHILIP SORENSEN DECISION TO PROHIBIT APPELLANT FROM PRESENTING HIS CLAIMS IN A WRIT OF HABEAS CORPUS TO BE HEARD AND RULED ON IN OPEN COURT THAT DECISION WAS BIAS PREJUDICIAL AND A VIOLATION OF THE CODE OF CONDUCT.

a. Instead, these questions are in most cases, answered by common law, statute, or the professional standards of the bench and bar. Id, citing I part, ABA Codes of Judicial Conduct (CJC) Canon 3 C (1) (a) (1972), Impartiality Questioned Canon Code of judicial Conduct 3 (c) (1) 1995., Objective Test. Ex Parte Com CJC Canon 3 (A) (4).

b. Bracy v. Gramley, 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). citing Aetna Life Ins. Co. V. Lavoie, 475 U.S. 813, 828, 106 S.Ct 1580, 89 L.Ed.2d 823 (1986).

c. Appellants Writ of Habeas Corpus Procedure in essence, is challenge his unlawful detention Because of a denial of a constitutional right under the fourth, sixth, fourteenth, and eighth Amendment. That lays the foundation for a Writ of Habeas Corpus proceeding. Johnson v. Zerbst, 304 U.S. 458, 58 s.ct 1019, 82 L.Ed 146 (U.S. Ga.1938). Under the Civil Rights act, R.S.s 1979,42 U.S.C S 1983, 42 U.S.C.A. s 1983, Petitioner, like others before him who allegedly been denied constitutional right under color of any statute of a state, may have his constitutional rights determined and, incidentally, secure heavy damages for any denial of constitutional rights. Lane v. Wilson, 307 U.S. 268, 59 s.St, 872, 83 L,Ed. 1281 (U.S Okla.1939).

d. Judge Philip Sorensen, and Assistant to the Attorney General Joshua Choate actions and findings arrived at through the use of erroneous legal standards (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

20. Appellant argues violation of the substantive due process guarantee ensures that legislation which deprives a person of a life, liberty, or property right have, at a minimum, a rational basis, and not be arbitrary or overly vague. *Constitutional Law*§ The guarantee allows a court to examine the constitutionality of the underlying statute as opposed to merely the process by which it is applied to each individual. See id. The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts "regardless of the fairness of the procedures used to implement them." Zinerman v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 983, 108 L.Ed.2d 100, 113 (1990) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662, 668 (1986)).

ARGUMENT CONT. RECUSAL

Appellant requested a different Judge, for the pending Writ of habeas corpus. Trial judge had erroneously failed to recuse himself sua sponte.

Under the objective prong, the court should find the "appearance of bias sufficient to cause doubt as to the judge's impartiality." Specifically, the court should observed that the "[trial] judge did engage in any active conduct demonstrating the appearance of impropriety."

Specifically, the court should agreed with Appellant that the trial court judge erroneously failed to recuse himself sua sponte from Writ of habeas corpus proceeding.

The court should agreed that the failure to do so created an appearance of bias on the part of the judge in violation of Appellant's due process rights under the United States Constitution.

Appellant relied on three United States Supreme Court decisions, In re Murchison, 349 U.S. 133 (1955), Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), and Liteky v. United States, 510 U.S. 540 (1994).[2] The Court should agreed with Appellant that the trial judge's failure to recuse himself sua sponte gave rise to an appearance of bias and that the appearance of bias violated his due process rights.

The Supreme Court held in In re Murchison, 349 U.S. 133 (1955), that it was unconstitutional for the same state judge, after a full hearing in open court, to punish contempt, previously committed before him while acting as a one-man "judge-grand jury" permitted under then Washington laws.

"It would be very strange if our system of law permitted a judge to act as grand jury and then try the very persons accused as a result of his investigations." 349 U.S. at 137. The Court concluded that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." Id. at 136.

That conclusion was based on "the basic requirement of due process" that the defendant receive "[a] fair trial in a fair tribunal." The Court commented that although fairness certainly required "an absence of actual bias," "our system of law has always endeavored to prevent even the probability of unfairness." Id. The Court acknowledged that its "stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Id. However, "to perform its high function in the best way justice must satisfy the appearance of justice."

Appellant relied on the above language to support his conclusion that an appearance of bias violated the Due Process Clause.

In re Murchison does not stand for that broad conclusion. Instead, its holding, as opposed to dicta, is confined to the basic constitutional principle of prohibiting a judge from adjudicating a case where he was also an investigator for the government. The rest of the language quoted in the preceding paragraph merely explains the holding. Even a generalized reading of the holding, that a judge cannot adjudicate a case where he has an interest in the outcome.

Petitioner has alleged, and there is evidence, that the trial judge here had a personal interest in the outcome of the Writ of habeas corpus.

The Supreme Court held in Liteky v. United States, 510 U.S. 540 (1994), that recusal under 28 U.S.C. § 455(a) was subject to the limitation known as the "extrajudicial source" doctrine or factor. That statute requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Specifically, the Court concluded that apart from surrounding comments or accompanying opinion, evidencing such "deep-seated favoritism or antagonism" as would make fair judgment impossible, judicial rulings alone "cannot possibly show reliance upon an extrajudicial source."

"An appearance of impropriety rose to the level of fundamental defect resulting in a complete miscarriage of justice." "The court acknowledged that "the due process clause sometimes requires a judge to recuse himself without a showing of actual bias, where a sufficient motive to be biased exists."

The question is not whether some possible temptation to be biased exists; instead, the question is, when does a biasing influence require disqualification? Consistent with the common law, we begin in answering this question by presuming the honesty and integrity of those serving as adjudicators. Disqualification is required only when the biasing influence is strong enough to overcome that presumption, that is, when the influence is so strong that we may presume actual bias. This occurs in situations in which experience teaches that the possibility of actual bias is too high to be constitutionally tolerable. A court must be convinced that a particular influence, under a realistic appraisal of psychological tendencies and human weakness, poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Appellant states that this "may" be the proper course, and that a hearing "is sufficient" to satisfy due process an leaves open the door as to whether a hearing is required and what else may be "sufficient" to alleviate any due process concerns. Rather, in determining whether a hearing must be held, the court must consider the content of the allegations, the serious ness of the alleged misconduct or bias, and the credibility of the source.

D. CONCLUSION AND PRAYER

Based upon all of the foregoing the Appellant respectfully requests this Court to grant the Appellant's appeal and reverse the Superior Courts order of commitment and remand this case for a hearing on the merits of appellants Writ of habeas Corpus for dismissal of Commitment Petition. And any other remedy which justice may require.

Respectfully Submitted

Signed and dated this 24 day of March 2021.

Appellant, William Curry Jr

Pro Se William Curry Jr.
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98388

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION TWO

WILLIAM CURRY Jr.

PETITIONER,

WILLIAM VAN HOOK, Dr. BRIAN JUDD, PhD. P.C., AND THE WASHINTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, D.S.H.S. AND SUB-AGENCY, SPECIAL COMMITMENT CENTER et al.

RESPONDENTS.

Case No. **54788-1-II**
DECLARATION OF SERVICE BY MAIL

DECLARATION OF SERVICE BY MAIL

I, William Curry Jr, certify under penalty of perjury the law of the State of Washington that the following is true and correct: That I am eighteen (18) years of age, and that on the 24 day of March 2021, I deposited in the mail of the United States Postal Service an original of the above Appeal to the Washington Court of Appeal Division Two, declaration of Service by Mail of in an envelope address to Joshua Choate Assistant Attorney General of Washington State.

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P.O. BOX 88600
Steilacoom, WA 98388
(253) 584-9602 0r 9603

Executed on DATED this 24 day of MARCH, 2021

Respectfully Submitted,

By William Curry Jr

PRO SE WILLIAM CURRY Jr.

P.O. BOX 88600

Steilacoom, WA 98388

CERTIFICATE OF SERVICE

Case Name: William Curry v. William Van Hook, Dr. Brian Judd Ph.d. P.C., the Washington State Department of Social Services D.S.H.S and Sub Agency, Special Commitment Center et al.

Case No: Case No. **54788-1-II**

I, WILLIAM CURRY Jr., CERTIFY THAT ON THE 24 DAY OF FEBRUARY 2021, I CAUSED A TRUE AND CORRECT COPY OF **APPELLANT FILED APPEAL TO THE COURT OF APPEALS DIVISION TWO TO CHALLENGE THE DISMISSAL OF WRIT OF HABEAS CORPUS THROUGH JUDGES BIAS AND PREJUDICE DO TO EX PARTE COMMUNICATION).** TO BE SERVED ON THE PARTY BELOW BY DEPOSITING SAID DOCUMENTS IN THE U.S. MAIL.

[X] Washington State Court of Appeals Division Two
950 BROADWAY STE 300
Tacoma, Washington 98402-3694

SIGNED THIS 24 DAY OF MARCH, 2021

William Curry Jr.
WILLIAM CURRY Jr. Pro Se